What are the Statutory Exemptions Relating to Law Enforcement and Security Records?

Chapter updated: 01/14/2011
http://myfloridalegal.com/sun.nsf/manual/1BB05D142D8E4724852566F3006C7A1A

1. Active criminal investigative and intelligence information exemption

a. Purpose and scope of exemption

Arrest and crime reports are generally considered to be open to public inspection. AGOs 91-74 and 80-96. *And see* AGO 08-23 (officer trip sheets revealing identity of officer, location and hours of work and locations to which officers have responded for emergency and non-emergency purposes are public records). However, s. 119.071(2)(c)1., F.S., exempts active criminal intelligence information and active criminal investigative information from public inspection. To be exempt, the information must be both "active" *and* constitute either "criminal investigative" or "criminal intelligence" information. *See Woolling v. Lamar*, 764 So. 2d 765, 768 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001).

Thus, if a crime report contains active criminal investigative information, the criminal investigative information may be excised from the report. AGO 91-74. *See also Palm Beach Daily News v. Terlizzese*, No. CL-91-3954-AF (Fla. 15th Cir. Ct. April 5, 1991), holding that a newspaper was not entitled under Ch. 119, F.S., to inspect the complete and uncensored incident report (prepared following a reported sexual battery but prior to the arrest of a suspect), including the investigating officer's narrative report of the interview with the victim, since such information was exempt from inspection as active criminal investigative information and as information identifying sexual battery victims. *See* s. 119.071(2)(c) and (h), F.S.

The active criminal investigative and intelligence exemption is limited in scope; its purpose is to prevent premature disclosure of information when such disclosure could impede an ongoing investigation or allow a suspect to avoid apprehension or escape detection. *See Tribune Company v. Public Records*, 493 So. 2d 480, 483 (Fla. 2d DCA 1986), *review denied sub nom.*, *Gillum v. Tribune Company*, 503 So. 2d 327 (Fla. 1987).

Moreover, the active criminal investigative and intelligence information exemption does not *prohibit* the disclosure of the information by the criminal justice agency; the information is exempt from and not subject to the mandatory inspection requirements in s. 119.07(1), F.S., which would otherwise apply. As the court stated in *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991), "[t]here are many situations in which investigators have reasons for displaying information which they have the option not to display." *And see* AGO 90-50. *Cf.* s. 838.21, F.S., providing that it is unlawful for a public servant, with intent to obstruct, impede, or prevent a criminal investigation or a criminal prosecution, to disclose active criminal investigative or intelligence information or to disclose or use information regarding either the efforts to secure or the issuance of a warrant, subpoena, or other court process or court order relating to a criminal investigation or criminal prosecution when such information is not available to the general public and is gained by reason of the public servant's official position.

The law enforcement agency seeking the exemption has the burden of proving that it is entitled to it. *Christy v. Palm Beach County Sheriff's Office,* 698 So. 2d 1365 (Fla. 4th DCA 1997); and *Florida Freedom Newspapers, Inc. v. Dempsey*, 478 So. 2d 1128 (Fla. 1st DCA 1985).

b. What is active criminal investigative or intelligence information?

"Criminal intelligence information" means information concerning "an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity." Section 119.011(3)(a), F.S.

Criminal intelligence information is considered "active" as long "as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities" or "is directly related to pending prosecutions or appeals." Section 119.011(3)(d), F.S.

"Criminal investigative information" is defined as information relating to "an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance." Section 119.011(3)(b), F.S. *See Rose v. D'Alessandro,* 380 So. 2d 419 (Fla. 1980) (complaints and affidavits received by a state attorney in the discharge of his investigatory duties constitute criminal intelligence or criminal investigative information).

Such information is considered "active" as long "as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future" or "is directly related to pending prosecutions or appeals." Section 119.011(3)(d), F.S.

"Criminal justice agency" is defined to mean any law enforcement agency, court, prosecutor or any other agency charged by law with criminal law enforcement duties or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties. The term also includes the Department of Corrections. Section 119.011(4), F.S.

c. What information is *not* considered to be criminal investigative or intelligence information and must be released unless some other exemption applies?

Section 119.011(3)(c), F.S., states that the following information is not criminal investigative or criminal intelligence information:

1. The time, date, location and nature of a reported crime;

2. The name, sex, age, and address of a person arrested (but see s. G.10., *infra*, regarding confidentiality of juvenile records) or the name, sex, age and address of the victim of a crime, except for a victim of a sexual offense or of child abuse, as provided in s. 119.071(2)(h), F.S.;

3. The time, date and location of the incident and of the arrest;

4. The crime charged;

5. Documents given or required to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S. [providing an exemption from disclosure for criminal intelligence or investigative information which reveals the identity of a victim of a sexual offense or of child abuse], unless the court finds that release of the information prior to trial would be defamatory to the good name of a victim or witness or jeopardize the safety of such victim or witness; and would impair the ability of the state attorney to locate or prosecute a codefendant;

6. Information and indictments except as provided in s. 905.26, F.S. [prohibiting disclosure of finding of indictment against a person not in custody, under recognizance or under arrest].

Accordingly, since the above information does not fall within the definition of criminal intelligence or criminal investigative information, it is always subject to disclosure unless some other specific exemption applies. For example, the "time, date, and location of the incident and of the arrest" cannot be withheld from disclosure since such information is expressly exempted from the definitions of criminal intelligence and criminal investigative information. *See* s. 119.011(3)(c)3., F.S.

d. Are records released to the defendant considered to be criminal investigative or intelligence information?

Except in limited circumstances, records which have been given or are required to be given to the person arrested cannot be withheld from public inspection as criminal investigative or intelligence information. *See* s. 119.011(3)(c)5., F.S. In other words, once the material has been made available to the defendant as part of the discovery process in a criminal proceeding, the material is ordinarily no longer considered to be exempt criminal investigative or criminal intelligence information. *See Tribune Company v. Public Records*, 493 So. 2d 480, 485 (Fla. 2d DCA 1986), *review denied sub nom., Gillum v. Tribune Company,* 503 So. 2d 327 (Fla. 1987) (all information given or required to be given to defendants is disclosable to the public when released to defendants or their counsel pursuant to the rules of discovery). *Accord Times Publishing Company v. State*, 903 So. 2d 322, 325 (Fla. 2d DCA 2005) ("we begin with the important general principle that once criminal investigative or intelligence information is disclosed by the State to a criminal defendant that information becomes a nonexempt public record subject to disclosure pursuant to section 119.07[1]"); *Staton v. McMillan*, 597 So. 2d 940, 941 (Fla. 1st DCA 1992), *review dismissed sub nom., Staton v. Austin*, 605 So. 2d 1266 (Fla. 1992) (active criminal investigation exemption does not apply to information for which disclosure was previously required under the rules of discovery). *Cf. State v. Buenoano*, 707 So. 2d 714 (Fla. 1998) (restricted access documents provided to state attorney by federal government pursuant to a loan agreement retained their confidential status under a Florida law providing an exemption for out-of-state criminal investigative information that is shared with Florida criminal justice agencies on a confidential basis, even though the documents erroneously had been given to the defendant and placed in the court record).

For example, in *Satz v. Blankenship*, 407 So. 2d 396 (Fla. 4th DCA 1981), *review denied*, 413 So. 2d 877 (Fla. 1982), the court ruled that a newspaper reporter was entitled to access to tape recordings concerning a defendant in a criminal prosecution where the recordings had been disclosed to the defendant. The court concluded that a reading of the statute reflected the Legislature's belief that once the information was released to the defendant, there was no longer any need to exclude the information from the public. Thus, the tape recordings were no longer "criminal investigative information" that could be withheld from public inspection. *See also News-Press Publishing Co. Inc. v. D'Alessandro*, No. 96-2743-CA-RWP (Fla. 20th Cir. Ct. April 24, 1996) (once state allowed

defense counsel to listen to portions of a surveillance audiotape involving a city councilman accused of soliciting undue compensation, those portions of the audiotape became excluded from the definition of "criminal investigative information," and were subject to public inspection). *Cf. City of Miami v. Post-Newsweek Stations Florida, Inc.,* 837 So. 2d 1002, 1003 (Fla. 3d DCA 2002), *review dismissed*, 863 So. 2d 1190 (Fla. 2003) (where defendant filed request for discovery, but withdrew request before state attorney provided such materials, requested materials were not "given or required by law . . . to be given to the person arrested" and thus did not lose their exempt status as active criminal investigative information).

Similarly, in *Bludworth v. Palm Beach Newspapers, Inc.*, 476 So. 2d 775 (Fla. 4th DCA 1985), *review denied*, 488 So. 2d 67 (Fla. 1986), the court upheld a trial judge's order requiring the state attorney to release to the news media all information furnished to the defense counsel in a criminal investigation. While the state attorney argued that the documents could be withheld because the criminal investigation was still "active" and thus exempt from disclosure, the court rejected this contention by concluding that once the material was given to the defendant pursuant to the rules of criminal procedure, the material was excluded from the statutory definition of criminal investigative information. Therefore, it was no longer relevant whether the investigation was active or not and the documents could not be withheld as active criminal investigative information. *Id*. at 779n.1.

Chapter 119's requirement of public disclosure of records made available to the defendant does not violate the attorney disciplinary rule prohibiting extrajudicial comments about defendants as long as the state attorney does not put an interpretation on the record that prejudices the defendant or exposes witnesses. *Bludworth v. Palm Beach Newspapers, Inc.*, 476 So. 2d at 780.

The only circumstances where criminal intelligence or investigative information can retain that status even though it has been made available to the defendant are:

1) If the information would reveal the identity of a victim of a sexual offense or child abuse pursuant to s. 119.071(2)(h), F.S.; or

2) If a court order has been issued finding that release of the information prior to trial would:

a) be defamatory to the good name of a victim or witness or jeopardize the safety of a victim or witness; and

b) impair the ability of a state attorney to locate or prosecute a codefendant.

In all other cases, material which has been made available to the defendant cannot be deemed criminal investigative or intelligence information and must be open to inspection unless some other exemption applies (*e.g.*, s. 119.071[2][e], F.S., exempting all information "revealing the substance of a confession" by a person arrested until there is a final disposition in the case); or the court orders closure of the material in accordance with its constitutional authority to take such measures as are necessary to obtain orderly proceedings and a fair trial or to protect constitutional privacy rights of third parties. *See Miami Herald Publishing Company v. Lewis,* 426 So. 2d 1 (Fla. 1982); *Florida Freedom Newspapers, Inc. v. McCrary*, 520 So. 2d 32 (Fla. 1988); *Post-Newsweek Stations, Florida Inc. v. Doe*, 612 So. 2d 549 (Fla. 1992). *And see Morris Communications Company LLC v. State,* 844 So. 2d 671, 673n.3 (Fla. 1st DCA 2003) (although documents turned over to the defendant during discovery are generally public records subject to disclosure under Ch. 119, the

courts have authority to manage pretrial publicity to protect the defendant's constitutional rights as described in *Miami Herald Publishing Company v. Lewis, supra). Cf. Times Publishing Co.* v. *State*, 903 So. 2d 322 (Fla. 2d DCA 2005) (while the criminal discovery rules authorize a nonparty to file a motion to restrict disclosure of discovery materials based on privacy considerations, where no such motion has been filed, the judge is not authorized to prevent public access on his or her own initiative).

e. When is criminal investigative and intelligence information considered inactive and thus no longer exempt from disclosure?

(1) Active criminal investigative information

Criminal investigative information is considered active (and, therefore, exempt from disclosure pursuant to s. 119.071[2][c], F.S.) "as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future." Section 119.011(3)(d)2., F.S. Information in cases barred from prosecution by a statute of limitation is not active. *Id*.

The definition of "active" requires "a showing in each particular case that an arrest or prosecution is reasonably anticipated in the foreseeable future." *Barfield v. City of Fort Lauderdale Police Department*, 639 So. 2d 1012, 1016 (Fla. 4th DCA), *review denied*, 649 So. 2d 869 (Fla. 1994). However, the Legislature did not intend that confidentiality be limited to investigations where the outcome and an arrest or prosecution was a certainty or even a probability. *Id*. at 1016-1017.

There is no fixed time limit for naming suspects or making arrests other than the applicable statute of limitations. *See Florida Freedom Newspapers, Inc. v. Dempsey*, 478 So. 2d 1128 (Fla. 1st DCA 1985). The fact that investigators might not yet have decided upon a suspect does not necessarily imply that the investigation is inactive. *Id*. at 1131.

Thus, an investigation will be deemed to be "active," even though there is no immediate anticipation of an arrest, so long as the investigation is proceeding in good faith, and the state attorney or grand jury will reach a determination in the foreseeable future. *Barfield v. City of Fort Lauderdale Police Department*, *supra*. Accordingly, a police department's criminal investigation into a shooting incident involving its officers continued to be "active" even though pursuant to department policy, all police shooting cases were sent to the state attorney's office for review by the grand jury and the department did not know if there would be an arrest in this particular case. *Id*.

Similarly, in *News-Press Publishing Co., Inc. v. Sapp*, 464 So. 2d 1335 (Fla. 2d DCA 1985), the court held that in view of an ongoing investigation by the state attorney and the convening of a grand jury in the very near future to consider a shooting incident by deputy sheriffs during an undercover drug transaction, documents consisting of the sheriff's completed internal investigation of the incident constituted "active criminal investigative information" and were, therefore, exempt from disclosure. *See also Wells v. Sarasota Herald Tribune Company, Inc.*, 546 So. 2d 1105 (Fla. 2d DCA 1989) (investigative files of the sheriff and state attorney were not inactive where an active prosecution began shortly after the trial judge determined that the investigation was inactive and ordered that the file be produced for public inspection).

Additionally, a circuit court held that a criminal investigative file involving an alleged 1988 sexual battery which had been inactive for three years, due in part to the death of the victim from unrelated causes, could be "reactivated" and removed from public view in 1992 when new developments prompted the police to reopen the case. The court found that it was irrelevant that the 1988 file could have been inspected prior to the current investigation; the important considerations were that the file apparently had not been viewed by the public during its "inactive" status and the file was now part of an active criminal investigation and therefore exempt from disclosure as active criminal investigative information. *News-Press Publishing Co., Inc. v. McDougall*, No. 92-1193CA-WCM (Fla. 20th Cir. Ct. February 26, 1992).

In another case, however, the appellate court upheld a court order unsealing an arrest warrant affidavit upon a showing of good cause by the subject of the affidavit. The affidavit had been quashed and no formal charges were filed against the subject. The court held that the affidavit did not constitute active criminal investigative information because there was no reasonable, good faith anticipation that the subject would be arrested or prosecuted in the near future. In addition, most of the information was already available to the subject through grand jury transcripts, the subject's perjury trial, or by discovery. *Metropolitan Dade County v. San Pedro*, 632 So. 2d 196 (Fla. 3d DCA 1994). *And see Mobile Press Register, Inc. v. Witt*, 24 Med. L. Rptr. 2336, No. 95-06324 CACE (13) (Fla. 17th Cir. Ct. May 21, 1996) (ordering that files in a 1981 unsolved murder be opened to the public because, despite recent reactivation of the investigation, the case had been dormant for many years and no arrest or prosecution had been initiated or was imminent).

(2) Active criminal intelligence information

In order to constitute exempt "active" criminal intelligence information, the information must "be of the type that will lead to the 'detection of *ongoing or reasonably anticipated criminal activities.*'" *Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365, 1367 (Fla. 4th DCA 1997), *quoting* s. 119.011(3)(d)1., F.S. *See Barfield v. Orange County, Florida*, No. CI92-5913 (Fla. 9th Cir. Ct. August 4, 1992) (denying a petition for writ of mandamus seeking access to gang intelligence files compiled by the sheriff's office). *See also* AGO 94-48 (information contained in the statewide integrated violent crime information system established by the Florida Department of Law Enforcement constitutes active criminal intelligence information; even though some of the information may have come from closed investigations, the information is collected to "anticipate, prevent, and monitor criminal activity and to assist in the conduct of ongoing criminal investigations").

By contrast, in *Christy* v. *Palm Beach County Sheriff's Office*, *supra*, the court ruled that records generated in connection with a criminal investigation conducted 13 years earlier did not constitute "active" criminal intelligence information. The court noted that the exemption "is not intended to prevent disclosure of criminal files forever on the mere possibility that other potential criminal defendants may learn something from the files." *Id.*

(3) Pending prosecutions or appeals

Criminal intelligence and investigative information is also considered to be "active" while such information is directly related to pending prosecutions or direct appeals. Section 119.011(3)(d), F.S. *See News-Press Publishing Co., Inc. v. Sapp*, *supra*; and *Tal-Mason v. Satz*, 614 So. 2d 1134 (Fla. 4th DCA), *review denied*, 624 So. 2d 269 (Fla. 1993) (contents of prosecutorial case file must remain secret until the conclusion of defendant's direct appeal).

Once the conviction and sentence have become final, criminal investigative information can no longer be considered to be "active." *State v. Kokal*, 562 So. 2d 324, 326 (Fla. 1990). *Accord Tribune Company v. Public Records*, 493 So. 2d 480, 483-484 (Fla. 2d DCA 1986), *review denied sub nom.*, *Gillum v. Tribune Company,* 503 So. 2d 327 (Fla. 1987) (actions for post-conviction relief following affirmance of the conviction on direct appeal are not pending appeals for purposes of s. 119.011[3][d]2., F.S.); *Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365, 1367 (Fla. 4th DCA 1997) (the term "pending prosecutions or appeals" in s. 119.011[3][d], F.S., applies only to ongoing prosecutions or appeals which have not yet become final).

It should be emphasized that the determination as to whether investigatory records related to pending prosecutions or appeals are "active" is relevant *only* to those records which constitute criminal intelligence or investigative information. In other words, if records are excluded from the definition of criminal intelligence or investigative information, as in the case of records given or required to be given to the defendant under s. 119.011(3)(c)5., F.S., it is immaterial whether the investigation is active or inactive. *See Bludworth v. Palm Beach Newspapers, Inc.*, 476 So. 2d 775, 779n.1 (Fla. 4th DCA 1985), *review denied*, 488 So. 2d 67 (Fla. 1986) ("Something that is not criminal intelligence information or criminal investigative information cannot be active criminal intelligence information or active criminal investigative information."). *Accord Staton v. McMillan*, 597 So. 2d 940, 941 (Fla. 1st DCA 1992), *review dismissed sub nom.*, *Staton v. Austin*, 605 So. 2d 1266 (Fla. 1992) (active criminal investigation exemption does not apply to information for which disclosure was previously required under discovery rules even though there is a pending direct appeal).

f. Does a criminal defendant's public records request trigger reciprocal discovery?

Section 119.07(8), F.S., states that the public access rights set forth in s. 119.07, F.S., "are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution or in collateral post-conviction proceedings." Thus, a criminal defendant's public records request for nonexempt law enforcement records relating to the defendant's pending prosecution constitutes an election to participate in discovery and triggers a reciprocal discovery obligation. *Henderson v. State*, 745 So. 2d 319 (Fla. 1999).

g. Does the active criminal investigative information exemption apply if the information has already been made public?

It has been held that the criminal investigative exemption does not apply if the information has already been made public. *Staton v. McMillan*, 597 So. 2d 940, 941 (Fla. 1st DCA 1992), *review dismissed sub nom.*, *Staton v. Austin*, 605 So. 2d 1266 (Fla. 1992). *See also Downs v. Austin*, 522 So. 2d 931, 935 (Fla. 1st DCA 1988) (once state has gone public with information which could have been previously protected from disclosure under Public Records Act exemptions, no further purpose is served by preventing full access to the desired information).

However, the voluntary disclosure of a non-public record does not automatically waive the exempt status of *other* documents. *Arbelaez v. State,* 775 So. 2d 909, 918 (Fla. 2000). *Accord Church of Scientology Flag Service Org., Inc. v. Wood,* No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997) (release of the autopsy report and the medical examiner's public comments about the report did not mean that other records in the possession of the medical examiner relating to an active criminal investigation into the death were public; "[i]t is not unusual for law enforcement and

criminal investigatory agencies to selectively release information relating to an ongoing criminal investigation in an effort to enlist public participation in solving a crime").

h. May active criminal investigative information be shared with another criminal justice agency without losing its protected status?

Exempt active criminal investigative information may be shared with another criminal justice agency and retain its protected status; in "determining whether or not to compel disclosure of active criminal investigative or intelligence information, the primary focus must be on the statutory classification of the information sought rather than upon in whose hands the information rests." *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995). The *City of Riviera Beach* court held that exempt records of the West Palm Beach police department's active criminal investigation concerning a shooting incident involving a police officer from Riviera Beach could be furnished to the Riviera Beach police department for use in a simultaneous administrative internal affairs investigation of the officer without losing their exempt status. *Accord Ragsdale v. State,* 720 So. 2d 203, 206 (Fla. 1998) (applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record).

Additionally, a police department may enter into a contract with a private company that compiles raw police data and then provides informational reports to law enforcement. The release of the exempt information to the corporation for this purpose would not cause such records to lose their exempt status. AGO 96-36.

However, while the courts have recognized that active criminal investigative information may be forwarded from one criminal justice agency to another without jeopardizing its exempt status, "[t]here is no statutory exemption from disclosure of an 'ongoing federal prosecution.'" *Woolling v. Lamar*, 764 So. 2d 765, 768 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001). In *Woolling,* the court held that a state attorney bore the burden of establishing that state attorney files in a *nolle prossed* case which were furnished to the federal government for prosecution of a defendant constituted active criminal investigative information; the fact that the federal government was actively prosecuting the case was not sufficient, standing alone, to justify imposition of the exemption.

i. Do other public records become exempt from disclosure simply because they are transferred to a criminal justice agency?

The exemption for active criminal intelligence and investigative information does not exempt other public records from disclosure simply because they are transferred to a law enforcement agency. *See, e.g.*, *Tribune Company v. Cannella*, 438 So. 2d 516, 523 (Fla. 2d DCA 1983), *reversed on other grounds*, 458 So. 2d 1075 (Fla. 1984), *appeal dismissed sub nom.*, *Deperte v. Tribune Company*, 105 S.Ct. 2315 (1985) (assistant state attorney could not withdraw public records from public scrutiny by asserting that he "compiled" the records simply because he subpoenaed them; thus, law enforcement personnel records compiled and maintained by the employing agency prior to a criminal investigation did not constitute criminal intelligence or criminal investigative information). *And see New Times, Inc. v. Ross*, No. 92-5795 CIV 25 (Fla. 11th Cir. Ct. March 17, 1992) (papers in a closed civil forfeiture file which subsequently became part of a criminal investigation were open to inspection as the materials could not be considered criminal investigative information because the file was closed prior to the commencement of the criminal investigation).

Thus, public records maintained and compiled by the Office of the Capital Collateral Representative cannot be transformed into active criminal investigative information by merely transferring the records to the Florida Department of Law Enforcement (FDLE). AGO 88-25. *Accord* Inf. Op. to Slye, August 5, 1993, concluding that the contents of an investigative report compiled by a state agency inspector general in carrying out his duty to determine program compliance are not converted into criminal intelligence information merely because FDLE also conducts an investigation or because such report or a copy thereof has been transferred to that department. *And see Sun-Sentinel, Inc. v. Florida Department of Children and Families*, 815 So. 2d 793 (Fla. 3d DCA 2002).

Similarly, in AGO 92-78, the Attorney General's Office concluded that otherwise disclosable public records of a housing authority are not removed from public scrutiny merely because records have been subpoenaed by and transferred to the state attorney's office. *And see* Inf. Op. to Theobald, November 16, 2006, stating that while an individual would be prohibited from obtaining records from the internal investigation file pursuant to s. 112.533(2), F.S., while the investigation is active, public records such as overtime slips created prior to the investigation and maintained in the law enforcement officer's personnel file would not become confidential simply because copies of such records are being used in the investigation.

However, the exemption for active criminal investigative information may not be subverted by making a public records request for all public records gathered by a law enforcement agency in the course of an ongoing investigation; to permit such requests would negate the purpose of the exemption. AGO 01-75.

In addition, a request made by a law enforcement agency to inspect or copy a public record that is in the custody of another agency and the custodian's response to the request, and any information that would identify whether a law enforcement agency has requested or received that public record are exempt from disclosure requirements, during the period in which the information constitutes active criminal investigative or intelligence information. Section 119.071(2)(c)2.a., F.S. The law enforcement agency that made the request must give notice to the custodial agency when the criminal intelligence information or criminal investigative information is no longer active, so that the custodian's response to the request and information that would identify the public record requested are available to the public. Section 119.071(2)(c)2.b., F.S.

Thus, while agency records are not exempt merely because they have been submitted to FDLE, s. 119.071(2)(c)2.a., F.S., exempts FDLE's request to inspect or copy records, as well as the agency's response, or any information that would identify the public record that was requested by FDLE or provided by the agency during the period in which the information constitutes criminal intelligence or criminal investigative information that is active. AGO 06-04. Although a request may be made for the agency's records, such a request may not be phrased, or responded to, in terms of a request for the specific documents asked for and received by FDLE during the course of any active criminal investigation. *Id*. *Cf.* Inf. Op. to Theobald, November 16, 2006, stating that while the records in a personnel department were subject to disclosure, the personnel department was precluded from identifying which of its records had been gathered by a law enforcement agency in the course of its active internal investigation.

j. Is an entire report exempt if it contains some active criminal investigative or intelligence information?

The fact that a crime or incident report may contain some active criminal investigative or intelligence information does not mean that the entire report is exempt from disclosure. Section 119.07(1)(d), F.S., requires the custodian of the document to delete only that portion of the record for which an exemption is asserted and to provide the remainder of the record for examination. *See, e.g.*, *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995), in which the court held that a city was authorized to withhold exempt active criminal investigative records but "must comply with the disclosure requirements of sections 119.07(2) [now s. 119.07(1)(d)] and 119.011(3)(c) by making partial disclosure of certain non-exempt information contained in the records including, *inter alia*, the date, time and location of the incident."

k. When is criminal investigative or intelligence information received from other states or the federal government exempt from disclosure?

Pursuant to s. 119.071(2)(b), F.S., criminal intelligence or investigative information received by a Florida criminal justice agency from a non-Florida criminal justice agency on a confidential or similarly restricted basis is exempt from disclosure. *See State v. Wright*, 803 So. 2d 793 (Fla. 4th DCA 2001), *review denied*, 823 So. 2d 125 (Fla. 2002) (state not required to disclose criminal histories of civilian witnesses which it obtained from the Federal Bureau of Investigation). The purpose of this statute is to "encourage cooperation between non-state and state criminal justice agencies." *State v. Buenoano*, 707 So. 2d 714, 717 (Fla. 1998). Thus, confidential documents furnished to a state attorney by the federal government remained exempt from public inspection even though the documents inadvertently had been given to the defendant and placed in the court record in violation of the conditions of the federal loan agreement. *Id.*

l. Is criminal investigative or intelligence information received prior to January 25, 1979, exempt from disclosure?

Criminal intelligence or investigative information obtained by a criminal justice agency prior to January 25, 1979, is exempt from disclosure. Section 119.071(2)(a), F.S. *See Satz v. Gore Newspapers Company*, 395 So. 2d 1274, 1275 (Fla. 4th DCA 1981) ("All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is specifically exempt from the requirements of public disclosure.").

2. Autopsy records

a. Autopsy reports

Autopsy reports made by a district medical examiner pursuant to Ch. 406, F.S., are public records and are open to the public for inspection in the absence of an exemption. AGO 78-23. *Cf. Church of Scientology Flag Service Org., Inc. v. Wood,* No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997) (physical specimens relating to an autopsy are not public records, although drafts and notes taken during an autopsy as well as laboratory reports and photographs are public records). *And see Bludworth v. Palm Beach Newspapers, Inc.*, 476 So. 2d 775, 777 (Fla. 4th DCA 1985), *review denied*, 488 So. 2d 67 (Fla. 1986), noting that a former statutory exemption precluding release of autopsy reports had been repealed.

Although autopsy reports are subject to Ch. 119, F.S., "[d]ocuments or records made confidential by statute do not lose such status upon receipt by the medical examiner." AGO 78-23. *See Church of Scientology Flag Service Org., Inc. v. Wood*, *supra* (pre-death medical records in the possession of the medical examiner are not subject to public inspection). In addition, statutory exemptions from disclosure, such as the exemption for active criminal investigative information, may also apply to portions of the autopsy report itself. AGO 78-23. *See Williams v. City of Minneola,* 575 So. 2d 683 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991), noting the application of the active criminal investigative information exemption to information contained in autopsy records.

b. Autopsy photographs and recordings

Section 406.135(2), F.S., provides that a photograph or video or audio recording of an autopsy held by a medical examiner is confidential and may not be released except as provided by court order or as otherwise authorized in the exemption. *See* AGOs 03-25 and 01-47, discussing the circumstances under which autopsy photographs and recordings may be viewed or copied. *And see* Inf. Op. to Lynn, July 25, 2007 (exemption applies to photographs and recordings taken or made by the medical examiner as a part of the autopsy process, including those taken before, during, and after the medical examiner performs the actual autopsy procedure). *Cf. Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388 (Fla. 5th DCA 2002), *review denied,* 848 So. 2d 1153 (Fla. 2003) (upholding trial court finding that newspaper failed to establish good cause for release of autopsy photographs of race car driver). *Compare Sarasota Herald-Tribune v. State,* 924 So. 2d 8, 14 (Fla. 2d DCA 2005), *review denied*, 918 So. 2d 293 (Fla. 2005), *cert. dismissed*, 126 S. Ct. 1139 (2006), in which the district court reversed a trial court order that had barred the media from viewing autopsy photographs that were admitted into evidence in open court during a murder trial; according to the appellate court, s. 406.135, F.S., "does not render these *court exhibits* confidential." (e.s.)

3. "Baker Act" reports

Part I, Ch. 394, F.S., is the "Baker Act," Florida's mental health act. The Baker Act provides for the voluntary or involuntary examination and treatment of mentally ill persons. Pursuant to s. 394.463(2)(a)2., F.S., a law enforcement officer must take a person who appears to meet the statutory criteria for involuntary examination into custody and deliver that person, or have that person delivered, to the nearest receiving facility for examination.

Section 394.463(2)(a)2., F.S., requires the officer to "execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record." A patient's clinical record is confidential. Section 394.4615(1), F.S.

However, in AGO 93-51, the Attorney General's Office noted that a written incident or event report prepared after a specific crime has been committed which contains information given during the initial reporting of the crime, is filed with the law enforcement agency as a record of that event, and is not made a part of the patient's clinical record, is not confidential pursuant to Ch. 394, F.S. The opinion noted that the incident report in question was not the confidential law enforcement report required by s. 394.463(2)(a)2., but was a separate written incident or event report prepared by a deputy sheriff for filing with the sheriff's office as an independent record of the deputy's actions.

4. Confessions

Section 119.071(2)(e), F.S., exempts from disclosure any information revealing the substance of a confession by a person arrested until such time as the case is finally determined by adjudication, dismissal, or other final disposition. *See Times Publishing Co. v. Patterson*, 451 So. 2d 888 (Fla. 2d DCA 1984) (trial court order permitting state attorney or defendant to designate affidavits, depositions or other papers which contained "statements or substance of statements" to be sealed was overbroad because the order was not limited to those statements revealing the substance of a "confession").

In AGO 84-33, the Attorney General's Office advised that only such portions of the complaint and arrest report in a criminal case file which reveal the "substance of a confession," *i.e.*, the material parts of a statement made by a person charged with the commission of a crime in which that person acknowledges guilt of the essential elements of the act or acts constituting the entire criminal offense, are exempt from public disclosure. *But see Times Publishing Company v. State*, 827 So. 2d 1040, 1042 (Fla. 2d DCA 2002), in which the appellate court held that a trial judge's order sealing portions of records of police interviews with the defendant did not constitute a departure from the essential requirements of law; however, portions of the interview transcript and tape which did not "directly relate to [the defendant's] participation in the crimes" did not contain the substance of a confession pursuant to s. 119.071(2)(e), F.S., and must be released.

5. Confidential informants

Section 119.071(2)(f), F.S., exempts information disclosing the identity of confidential informants or sources. This exemption applies regardless of whether the informants or sources are still active or may have, through other sources, been identified as such. *Christy v. Palm Beach County Sheriff's Office,* 698 So. 2d 1365, 1368 (Fla. 4th DCA 1997); *Salcines v. Tampa Television*, 454 So. 2d 639 (Fla. 2d DCA 1984); and *Rameses, Inc. v. Demings*, 29 So. 3d 418 (Fla. 5th DCA 2010). *And see State v. Natson,* 661 So. 2d 926 (Fla. 4th DCA 1995) (private citizen who provided police with tip information which led to defendant's arrest may be afforded confidential informant status). *Cf. Doe v. State*, 901 So. 2d 881 (Fla. 4th DCA 2005) (where citizen provided information to state attorney's office which led to a criminal investigation and was justified in inferring or had a reasonable expectation that he would be treated as a confidential source, the citizen is entitled to have his identifying information redacted from the closed file, even though there was no express assurance of confidentiality by the state attorney's office); *State v. Bartholomew*, No. 08-5656CF10A (Fla. 17th Cir. Ct., August 7, 2009) (even if Crimestoppers Council of Broward County were an agency for purposes of Ch. 119, F.S., information relating to the identity of informants and persons from whom they received information would be confidential under s. 119.071[2][f], F.S.).

However, in *Ocala Star Banner Corporation v. McGhee*, 643 So. 2d 1196 (Fla. 5th DCA 1994), the court held that a police department should not have refused to release an entire police report on the ground that the report contained some information identifying a confidential informant. According to the court, "[w]ithout much difficulty the name of the informant, [and] the sex of the informant (which might assist in determining the identity) . . . can be taken out of the report and the remainder turned over to [the newspaper]." *Id.* at 1197. *Accord Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d at 1368.

Moreover, in *City of St. Petersburg v. Romine ex rel. Dillinger*, 719 So. 2d 19, 21 (Fla. 2d DCA 1998), the court ruled that information regarding payments to a confidential informant (who had been previously identified as a confidential informant during a criminal trial) is subject to disclosure as long as the

records are sufficiently redacted to conceal the specific cases on which the informant worked. The court acknowledged that the Public Records Act may not be used in such a way as to obtain information that the Legislature has declared must be exempt from disclosure, but said that "this is not a situation where someone has alleged that they know or suspect the identity of a confidential informant and the production of records involving that informant would confirm the person's information or suspicion." *Id.*

6. Criminal history information

a. Criminal history information generally

Except where specific exemptions apply, criminal history information is a public record. AGO 77-125; Inf. Op. to Lymn, June 1, 1990. *And see* AGO 97-09 (a law enforcement agency may, without a request, release nonexempt information contained in its public records relating to sexual offenders; the agency's authority to release such information is not limited to those offenders who are designated as "sexual predators").

Section 943.046, F.S., states:

(1) Any state or local law enforcement agency may release to the public any criminal history information and other information regarding a criminal offender, including, but not limited to, public notification by the agency of the information, unless the information is confidential and exempt [from disclosure]. However, this section does not contravene any provision of s. 943.053 which relates to the method by which an agency or individual may obtain a copy of an offender's criminal history record.

(2) A state or local law enforcement agency and its personnel are immune from civil liability for the release of criminal history information or other information regarding a criminal offender, as provided by this section.

Section 943.053(2), F.S., referenced in the above statute, provides restrictions on the dissemination of criminal history information obtained from *federal* criminal justice information systems and *other states* by stating that such information shall not be disseminated in a manner inconsistent with the laws, regulations, or rules of the originating agency. Thus, criminal history record information shared with a public school district by the Federal Bureau of Investigation retains its character as a federal record to which only limited access is provided by federal law and is not subject to public inspection. AGO 99-01.

Section 943.053(3), F.S., states that criminal history information compiled by the Criminal Justice Information Program of the Florida Department of Law Enforcement from *intrastate* sources shall be provided to law enforcement agencies free of charge and to persons in the private sector upon payment of fees as provided in the subsection.

b. Sealed and expunged records

Access to criminal history records sealed or expunged by court order in accordance with s. 943.059 or s. 943.0585, F.S., is strictly limited. *See, e.g., Alvarez v. Reno,* 587 So. 2d 664 (Fla. 3d DCA 1991) (Goderich, J., specially concurring) (state attorney report and any other information revealing the

existence or contents of sealed records is not a public record and cannot, under any circumstances, be disclosed to the public).

A law enforcement agency that has been ordered to expunge criminal history information or records should physically destroy or obliterate information consisting of identifiable descriptions and notations of arrest, detentions, indictments, information, or other formal criminal charges and the disposition of those charges. AGO 02-68. However, criminal intelligence information and criminal investigative information do not fall within the purview of s. 943.0585, F.S. *Id. And see* AGO 00-16 (only those records maintained to formalize the petitioner's arrest, detention, indictment, information, or other formal criminal charge and the disposition thereof would be subject to expungement under s. 943.0585).

There are exceptions allowing disclosure of information relating to the existence of an expunged criminal history record to specified entities for their respective licensing and employment purposes, and to criminal justice agencies for their respective criminal justice purposes. Section 943.0585(4), F.S. Similar provisions exist relative to disclosure of sealed criminal history records. Section 943.059(4), F.S. A records custodian who has received information relating to the existence of an expunged or sealed criminal history record is prohibited from disclosing the existence of such record. AGO 94-49.

7. Emergency "911" voice recordings

Section 365.171(12), F.S., provides that any record, recording, or information, or portions thereof, obtained by a public agency for the purpose of providing services in an emergency which reveals the name, address, or telephone number or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications E911 system is confidential and exempt from s. 119.07(1), F.S. The exemption applies only to the name, address, telephone number or personal information about or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services. *Id. Accord* AGO 90-43 (only that portion of 911 tape relating to name, address and telephone number of the caller exempt).

A tape recording of a "911" call is a public record which is subject to disclosure after the deletion of the exempt information. AGO 93-60. This does not, however, preclude the application of another exemption to such records. Thus, if the "911" calls are received by a law enforcement agency and the county emergency management department, information which is determined by the law enforcement agency to constitute active criminal investigative information may also be deleted from the tape prior to public release. AGO 95-48. *See also* Inf. Op. to Fernez, September 22, 1997 (while police department is not prohibited from entering into an agreement with the public to authorize access to its radio system, the department must maintain confidentiality of exempt personal information contained in "911" radio transmissions).

8. Fingerprint records

Biometric identification information is exempt from s. 119.07(1), F.S. Section 119.071(5)(g)1., F.S. The term "biometric identification information" means any record of friction ridge detail, fingerprints, palm prints, and footprints. *Id.*

9. Firearms records

Section 790.335(2), F.S., states that no governmental agency "or any other person, public or private, shall knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms." Exceptions to the prohibition are included in s. 790.335(3), F.S., and include, among other things, records of firearms used in committing a crime and records relating to any person who has been convicted of a crime. *See also* s. 790.065(4), F.S., providing that specified information relating to a buyer or transferee of a firearm who is not prohibited by law from receipt or transfer of a firearm is confidential and may not be disclosed by the Department of Law Enforcement to any other person or agency. *Cf.* AGO 04-52 (prohibition against maintaining list of firearms and firearms owners not applicable to paper pawn transaction tickets).

Personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to s. 790.06, F.S., held by the Department of Agriculture and Consumer Services is confidential and exempt from public disclosure requirements. Section 790.0601(1), F.S. Such information shall be disclosed with the express written consent of the applicant or licensee or his or her legally authorized representative, by court order upon a showing of good cause, or upon request by a law enforcement agency in connection with the performance of lawful duties. Section 790.0601(2), F.S.

10. Juvenile offender records

a. Confidentiality

Juvenile offender records traditionally have been considered confidential and treated differently from other records in the criminal justice system. With limited exceptions, s. 985.04(1), F.S., provides, in relevant part, that:

> Except as provided in subsections (2), (3), (6), and (7) and s. 943.053, *all information obtained under this chapter* in the discharge of official duty by any judge, any employee of the court, any authorized agent of the department [of Juvenile Justice], the Parole Commission, the Department of Corrections, the juvenile justice circuit boards, any law enforcement agent, or any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile *is confidential and may be disclosed only to* the authorized personnel of the court, the department and its designees, the Department of Corrections, the Parole Commission, law enforcement agents, school superintendents and their designees, any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile, and others entitled under this chapter to receive that information, or upon order of the court. (e.s.)

Similarly, s. 985.04(7)(a), F.S., limits access to records in the custody of the Department of Juvenile Justice. With the exception of specified persons and agencies, juvenile records in the custody of that agency "may be inspected only upon order of the Secretary of Juvenile Justice or his or her authorized agent by persons who have sufficient reason and upon such conditions for their use and disposition as the secretary or his or her authorized agent deems proper." *And see* s. 985.045(2), F.S., providing, with limited exceptions, for confidentiality of juvenile court records. *Cf.* s. 943.053(3), F.S., governing release of "[c]riminal history information, including information relating to minors" compiled by the Florida Department of Law Enforcement).

Thus, as a general rule, access to records of juvenile offenders is limited. *See, e.g.,* Inf. Op. to Galbraith, April 8, 1992 (city's risk manager and attorney representing city in unrelated civil lawsuit not among those authorized to have access); and Inf. Op. to Wierzbicki, April 7, 1992 (domestic violence center not among those authorized to receive juvenile information). *And see* AGO 07-19, stating that in a juvenile misdemeanor case where the provisions of s. 985.04(2), F.S., are not applicable, the sheriff's office is not authorized to reveal the names and addresses of the parents of the juvenile offender when asked for in a public records request.

However, the subject of juvenile offense records may authorize access to such records to others (such as a potential employer) by means of a release. AGO 96-65. And, juvenile confidentiality requirements do not apply to court records of a case in which a juvenile is prosecuted as an adult, regardless of the sanctions ultimately imposed in the case. AGO 97-28.

However, if a juvenile prosecuted as an adult is transferred to serve his or her sentence in the custody of the Department of Juvenile Justice, the department's records relating to that juvenile are not open to public inspection. *New York Times Company v. Florida Department of Juvenile Justice*, No. 03-46-CA (Fla. 2d Cir. Ct. March 20, 2003). *See* s. 985.04(7)(a), F.S., providing confidentiality for records in the custody of the department regarding children.

Confidential photographs of juveniles taken in accordance with s. 985.11, F.S, "may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime." Section 985.11(1)(b), F.S. This statute authorizes a law enforcement officer to use photographs of juvenile offenders in a photographic lineup for the purpose of identifying the perpetrator of a crime, regardless of whether those juvenile offenders are suspects in the crime under investigation. AGO 96-80. *Cf. Barfield v. Orange County, Florida*, No. CI92-5913 (Fla. 9th Cir. Ct. August 4, 1992) (denying petitioner's request to inspect gang intelligence files compiled by the sheriff's office).

b. Exceptions to confidentiality

(1) Child traffic violators

All records of child traffic violations shall be kept in the full name of the violator and shall be open to inspection and publication in the same manner as adult traffic violations. Section 985.11(3), F.S.

(2) Felony arrests and adult system transfers

Until October 1, 1994, law enforcement agencies generally could release only the name and address of juveniles 16 and older who had been charged with or convicted of certain crimes. In 1994, the juvenile confidentiality laws were modified to eliminate the age restriction and provide enhanced disclosure. Section 985.04(2), F.S., now provides:

Notwithstanding any other provisions of this chapter, the name, photograph, address, and crime or arrest report of a child:

(a) Taken into custody if the child has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;

(b) Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;

(c) Transferred to the adult system under s. 985.557, indicted under s. 985.56, or waived under s. 985.556;

(d) Taken into custody by a law enforcement officer for a violation of law subject to the provisions of s. 985.557(2)(b) or (d); or

(e) Transferred to the adult system but sentenced to the juvenile system pursuant to s. 985.565 shall not be considered confidential and exempt from . . . s. 119.07(1) solely because of the child's age.

Thus, a court ruled that a surveillance videotape which showed an altercation between children on a school bus was a student record and initially was exempt from disclosure pursuant to former student confidentiality laws. *In the Interest of D.P., etc.*, No. 97-4001 (Fla. 18th Cir. Ct. November 6, 1997). However, some of the students were subsequently arrested on felony charges and the tape was shown to defense counsel. Because of this, the judge ordered that the tape be publicly released with the faces of the non-charged students and the victims excised from view. *Id.* While current law exempts "education records" (as defined in FERPA and implementing regulations), the court in *National Collegiate Athletic Association v. The Associated Press,* 18 So. 3d 1201 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010), concluded that FERPA does not prohibit the release of records so long as the student's identifying information is redacted. *See* s. J.4., *infra*, of this manual, discussing changes to student confidentiality laws.

The expanded disclosure provisions apply only to juvenile records created after October 1, 1994, the effective date of the amendments to the juvenile confidentiality laws. AGO 95-19. Confidential information on juveniles arrested prior to October 1, 1994, is available by court order upon a showing of good cause. *Id*. *Cf. In the Interest of Gay,* No. 94-8481 (Fla. 6th Cir. Ct. Juv. Div. December 30, 1994), allowing a newspaper to view "the entire juvenile court files," with the exception of psychological reports, relating to juveniles facing felony charges.

(3) Mandatory notification to schools

Section 985.04(4)(b), F.S., provides that when the state attorney charges a juvenile with a felony or a delinquent act that would be a felony if committed by an adult, the state attorney must notify the superintendent of the juvenile's school that the juvenile has been charged with such felony or delinquent act. A similar directive applies to a law enforcement agency that takes a juvenile into custody for an offense that would have been a felony if committed by an adult, or a crime of violence. Section 985.04(4)(a), F.S.

In addition, s. 1006.08(2), F.S., requires the court, within 48 hours of the finding, to notify the appropriate school superintendent of the name and address of a student found to have committed a delinquent act, or who has had an adjudication of a delinquent act withheld which, if committed by an adult, would be a felony, or the name and address of any student found guilty of a felony. *And see* s. 985.04(4), F.S., requiring the school superintendent, when informed by a state attorney of a child formally charged with a felony or a delinquent act which, if committed by an adult, would be a felony, to relay such information to certain school personnel within 48 hours, and requiring the Department of Juvenile Justice to disclose to the school superintendent the presence

of a juvenile sexual offender in the care and custody or under the jurisdiction and supervision of the department.

(4) Victim access

Section 985.036(1), F.S., allows the victim, the victim's parent or guardian, their lawful representatives, and, in a homicide case, the next of kin, to have access to information and proceedings in a juvenile case, provided that such rights do not interfere with the constitutional rights of the juvenile offender. Those entitled to access "may not reveal to any outside party any confidential information obtained under this subsection regarding a case involving a juvenile offense, except as is reasonably necessary to pursue legal remedies." *Id. And see* ss. 985.04(3) and 960.001(8), F.S., authorizing similar disclosures to victims.

(5) Sexual offenders

Section 985.481(4), F.S., authorizes the Department of Juvenile Justice or any law enforcement agency to notify the community and the public of the presence in the community of a person who has been adjudicated delinquent as provided in section 943.0435(1)(a)1.d., F.S. However, with respect to a sexual offender who has been found to be a sexual predator under chapter 775, the Department of Law Enforcement or any other law enforcement agency must inform the community and the public of the sexual predator's presence in the community as provided in chapter 775. *Id. And see* s. 985.04(6)(b), F.S., providing sexual offender and predator registration information as required in ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S., is a public record pursuant to s. 119.07(1), F.S., and as otherwise provided by law.

11. Law enforcement personnel records

In the absence of an express legislative exemption, law enforcement personnel records are open to inspection just like those of other public employees. *See Tribune Company v. Cannella*, 438 So. 2d 516, 524 (Fla. 2d DCA 1983), *quashed on other grounds*, 458 So. 2d 1075 (Fla. 1984), *appeal dismissed sub nom., Deperte v. Tribune Company*, 105 S.Ct. 2315 (1985) (law enforcement personnel records compiled and maintained by the employing agency "can never constitute criminal investigative or intelligence information within the meaning of the Public Records Act even if subpoenaed by another law enforcement agency at some point after their original compilation by the employing agency"). However, there are some exemptions which apply specifically to law enforcement personnel records.

a. Complaints filed against law enforcement officers

(1) Scope of exemption and duration of confidentiality

Section 112.533(2)(a), F.S., provides that complaints filed against law enforcement officers and correctional officers, and all information obtained pursuant to the agency's investigation of the complaint, are confidential *until* the investigation is no longer active *or* until the agency head or his or her designee provides written notice to the officer who is the subject of the complaint that the agency has concluded the investigation with a finding to either proceed or not to proceed with disciplinary action or the filing of charges. *See also* s. 112.531(1), F.S., which defines "law enforcement officer" as any person, other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of

this state; and includes any person who is appointed by the sheriff as a deputy sheriff pursuant to s. 30.07, F.S.

Complaints filed with the employing agency by any person, whether within or outside the agency, are subject to the exemption. AGO 93-61. However, the complaint must be in writing in order for the confidentiality provisions to apply. *City of Delray Beach v. Barfield,* 579 So. 2d 315 (Fla. 4th DCA 1991).

While s. 112.533, F.S., applies to complaints and records obtained pursuant to the agency's investigation of the complaint, it does not transform otherwise public records (such as crime or incident reports) into confidential records simply because the actions which are described in the crime report later form the basis of a complaint filed pursuant to s. 112.533, F.S. AGO 96-27. Thus, a circuit judge ordered a police department to provide the media with a copy of an unredacted incident report that identified a police officer involved in the shooting of an armed suspect. *Morris Publishing Group, LLC v. Thomason*, No. 16-2005-CA-7052-XXXX-MA (Fla. 4th Cir. Ct. October 14, 2004). *And see* AGO 08-33 (list of law enforcement officers who have been placed on administrative duty by their employer is not confidential under s. 112.533[2][a], F.S., but is subject to inspection and copying even if information on the list will identify officers who are the subject of internal investigation).

If the officer resigns prior to the agency's completion of its investigation, the exemption from disclosure provided by s. 112.533(2), F.S., no longer applies, even if the agency is still actively investigating the complaint. AGO 91-73. However, if the complaint has generated information which qualifies as active criminal investigative information, *i.e.,* information compiled by a criminal justice agency while conducting an ongoing criminal investigation of a specific act, such information would be exempt while the investigation is continuing with a good faith anticipation of securing an arrest or prosecution in the foreseeable future. *Id. See* s. 112.533(2)(b), F.S., providing that the disclosure provisions do not apply to any public record [such as active criminal investigative information exempted in s. 119.071(2)(c), F.S.] which is exempt from disclosure pursuant to Ch. 119, F.S.

The exemption is of limited duration. Section 112.533(2), F.S., establishes that the complaint and all information gathered in the investigation of that complaint generally become public records at the conclusion of the investigation or at such time as the investigation becomes inactive. AGO 95-59. Thus, a court ruled that the exemption ended once the sheriff's office provided the accused deputy with a letter stating that the investigation had been completed, the allegations had been sustained, and that the deputy would be notified of the disciplinary action to be taken. *Neumann v. Palm Beach County Police Benevolent Association*, 763 So. 2d 1181 (Fla. 4th DCA 2000).

However, the mere fact that written notice of intervening actions is provided to the officer under investigation does not signal the end of the investigation nor does such notice make this information public prior to the conclusion of the investigation. AGO 95-59. Similarly, the exemption remains in effect if an agency schedules a pre-disciplinary determination meeting with an officer to hear and evaluate the officer's side of the case because "[d]iscipline is not an accepted fact at this point." *Palm Beach County Police Benevolent Association v. Neumann,* 796 So. 2d 1278, 1280 (Fla. 4th DCA 2001).

A complaint is presumed to be inactive, and hence subject to disclosure, if no finding is made within 45 days after the complaint is filed. Section 112.533(2)(b), F.S. *See City of Delray Beach v. Barfield*, 579 So. 2d at 318 (trial court's finding that complaint was inactive, despite contrary

testimony of law enforcement officers conducting the investigation, comes to appellate court "clothed with its own presumption of correctness--especially, as here, where there is other record evidence which sustains it").

(2) Law enforcement officer's access

A political subdivision that initiates or receives a complaint against a law enforcement officer or correctional officer must within 5 business days forward the complaint to the employing agency of the officer who is the subject of the complaint for review or investigation. Section 112.533(1)(b), F.S. The confidential nature of the complaint does not preclude the officer who is the subject of the complaint, along with legal counsel or other representative, from reviewing the complaint and all statements, regardless of form, made by the complainant and witnesses, and all existing evidence, including, but not limited to, incident reports, analyses, GPS locator information, and audio or video recordings relating to the investigation immediately before beginning the investigative interview. Section 112.533(2)(a), F.S. If a witness is incarcerated in a correctional facility and may be under the supervision of, or have contact with, the officer under investigation, only the names and statements of the complainant and non-incarcerated witnesses may be reviewed by the officer. *Id.*

The officer under investigation and subject to interrogation by members of his or her agency for any reason that could lead to disciplinary action, suspension, demotion, or dismissal must be informed of the nature of the investigation before any interrogation begins and must be informed of the names of all complainants. Section 112.532(1)(d), F.S. The complaint and all witness statements, including all other existing subject officer statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation, must be provided to the officer who is the subject of the complaint before the beginning of any investigative interview of that officer. *Id*.

Thus, the officer who is the subject of the complaint may have access to confidential information prior to the time that such information becomes available for public inspection. AGO 96-27. However, s. 112.533(2)(b) F.S., qualifies the officer's right of access provided by s. 112.533(2)(a), F.S., by stating that the disclosure provisions do not apply to any record that is exempt from disclosure under Ch. 119, F.S., such as active criminal investigative information.

The limited access to the complaint and witness statements provided by s. 112.533(2)(a), F.S., does not restrict the officer's (or the public's) access to otherwise public records, such as incident reports because "[t]here is no indication in section 112.533 . . . that the Legislature intended to make public records that are open to public inspection and copying unavailable to a law enforcement officer who is the subject of a complaint under investigation by a law enforcement agency." AGO 96-27.

Moreover, notwithstanding the provisions of s. 112.533(2), F.S., if an officer is subject to disciplinary action consisting of suspension with loss of pay, demotion, or dismissal, the officer, or the officer's representative, shall, upon request, be provided with a complete copy of the investigative file, including the final Investigative report and all evidence, and be given the opportunity to address the findings in the report with the employing agency before imposing disciplinary action. Section 112.532(4)(b), F.S. "The contents of the complaint and investigation shall remain confidential until such time as the employing law enforcement agency makes a final determination whether or not to issue a notice of disciplinary action consisting of suspension with loss of pay, demotion, or dismissal." *Id*.

(3) Limitations on disclosure

Section 112.533(2)(b), F.S., states that the inspection provisions in that subsection do not apply to any public record which is exempt from public disclosure under Ch. 119, F.S. For example, active criminal investigative or intelligence information which is exempt pursuant to s. 119.071(2)(c), F.S., remains exempt notwithstanding the disclosure provisions set forth in s. 112.533(2)(a), F.S. *Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278 (Fla. 4th DCA 2001). *And see* AGO 91-73. Thus, in such cases, the information would be subject to disclosure when the criminal investigative information exemption ends, rather than as provided in s. 112.533(2), F.S. *Cf. City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995) (exempt active criminal investigative information may be shared with another criminal justice agency for use in a simultaneous internal affairs investigation and retain its protected status).

Similarly, information that would reveal the identity of the victim of child abuse or the victim of a sexual offense is not subject to disclosure since the information is exempt pursuant to s. 119.071(2)(h), F.S. *Palm Beach County Police Benevolent Association v. Neumann*, *supra.*

However, the state attorney's records of a *closed* criminal investigation are not made confidential by s. 112.533, F.S., even though an internal investigation conducted by the police department remains pending concerning the same complaint. AGO 00-66. *Cf.* AGO 96-05, noting that a police report of an agency's criminal investigation of a police officer is a public record in the hands of the police department after the investigation is over regardless of whether a copy of the report is forwarded to the Criminal Justice Standards and Training Commission or to the Commission on Ethics.

(4) Unauthorized disclosure penalties

Section 112.533(4), F.S., makes it a first degree misdemeanor for any person who is a participant in an internal investigation to willfully disclose any information obtained pursuant to the agency's investigation before such information becomes a public record. However, the subsection "does not limit a law enforcement or correctional officer's ability to gain access to information under paragraph (2)(a)." Section 112.533(4), F.S. In addition, a sheriff, police chief or other head of a law enforcement agency, or his or her designee, may acknowledge the existence of a complaint, and the fact that an investigation is underway. *Id.*

The Attorney General's Office has issued several advisory opinions interpreting this statute. *See, e.g.*, AGOs 03-60 (while public disclosure of information obtained pursuant to an internal investigation prior to its becoming a public record is prohibited, s. 112.533[4], F.S., "would not preclude intradepartmental communications among those participating in the investigation"); and 96-18 (statute does not preclude a chief of police from discussing information obtained from an active internal investigation with his or her supervisory staff within the police department in carrying out the internal investigation). *Cf.* AGO 97-62 (confidentiality requirements prevent the participation of a citizens' board in resolving a complaint made against a law enforcement officer until the officer's employing agency has made its initial findings). *But see Cooper v. Dillon*, 403 F. 3d 1208, 1218-1219 (11th Cir. 2005), in which the 11th Circuit Court of Appeals ruled that s. 112.533(4), F.S., was unconstitutional "[b]ecause the curtailment of First Amendment freedoms by Fla. Stat. ch. 112.533(4) is not supported by a compelling state interest, the statute fails to satisfy strict scrutiny and unconstitutionally abridges the rights to speak, publish, and petition government."

b. Home addresses, telephone numbers, etc.

Section 119.071(4)(d)1.a., F.S., makes exempt (but not confidential) certain information relating to past and present law enforcement officers and their families held by the officer's employer by excluding from public inspection:

The home addresses, telephone numbers, social security numbers, and photographs of active or former law enforcement personnel, including correctional and correctional probation officers . . . ; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel . . . .

The same exemption exists for current or former state attorneys, statewide prosecutors, as well as current and former assistant state attorneys, and assistant statewide prosecutors. Section 119.071(4)(d)1.d., F.S. *And see* s. 119.071(4)(d)1.i., F.S. (applying a similar exemption to certain employees of the Department of Juvenile Justice). Identification and location information (*i.e.,* home address, telephone number and photograph of a current or former United States attorney or assistant United States attorney and the attorney's spouse or child, as well as the place of employment of the spouse or child or the name and location of the school or day care facility attended by the child) is exempt provided the attorney submits to the agency having custody of such information a written request to exempt such information and a written statement that he or she has made reasonable efforts to protect such information from being available to the public. Section 119.071(5)(i), F.S.

An agency that Is the custodian of personal information specified in s. 119.071(4)(d)1., F.S., but is not the past or present employer of the officer or employee, may maintain the exempt status of that information *only if* the officer or employee or the employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency. Section 119.071(4)(d)2., F.S. See AGO 04-18 (applying exemption when requested to petitions and campaign papers filed with supervisor of elections), and AGO 97-67 (Official Records maintained by clerk of court). A property appraiser is precluded from making technology available to the public that would enable a user to view a map on the Internet showing the physical location of a law enforcement officer's home, even though the map does not contain the actual home address of the officer, if the property appraiser has received a written confidentiality request from the officer. AGO 04-20. And see Inf. Op. to Cook, December 22, 2008, noting that nothing In s. 119.071(4)(d) indicates that such a written request may be made after a request for the public record has been made; generally, the date in determining whether a document is subject to disclosure is the date the public records request is made, making the law in effect on that date applicable.

It should also be noted that the exemption afforded by s. 119.071(4)(d), F.S., applies only to records held by a public agency or a private entity acting on behalf of a public agency; it does not apply to or preclude a private company from releasing such information unless that company falls within the definition of "Agency" because it is acting on behalf of a public agency. Inf. Op. to Gomez. November 3, 2008.

The purpose of the s. 119.071(4)(d) exemption is to protect the safety of law enforcement officers and their families by removing certain information relating to such individuals from the mandatory disclosure requirements of Ch. 119, F.S. AGO 90-50. Accordingly, a posting of the names, I.D. numbers and photographs of police officers in the hallway of the police department for public display would appear to be counter to the purpose of the exemption. *Id. And see* AGO 07-21

stating that a police department, in determining whether to release photographs of law enforcement personnel, must determine whether there is a statutory or substantial policy need for disclosure. In the absence of a statutory or other legal duty to be accomplished by disclosure, the agency should consider whether the release of such information is consistent with the purpose of the exemption afforded by s. 119.071(4)(d)1. *Cf.* s. 843.17, F.S., making it a misdemeanor to maliciously publish or disseminate, with intent to obstruct the due execution of the law or with the intent to intimidate, hinder, or interrupt any law enforcement officer in the legal performance of his or her duties, the residence address or telephone number of any law enforcement officer while designating the officer as such, without authorization of the agency which employs the officer. *But see Brayshaw v. City of Tallahassee, Fla.,* 709 F. Supp. 2d 1244 (N.D. Fla. 2010), holding that s. 843.17, F.S., was unconstitutional on its face.

The Attorney General's Office has advised that s. 119.071(4)(d)1., F.S., does not exempt from disclosure booking photographs of law enforcement and correctional officers who have been arrested and who are not undercover personnel, whose identity would otherwise be protected by s. 119.071(4)(c), F.S. AGO 94-90. However, if the officer has filed a written request for confidentiality as provided in former s. 119.07(3)(i)2., F.S. [*see now* s. 119.071(4)(d)2., F.S.], the booking photograph may not be released. *Fraternal Order of Police, Consolidated Lodge 5-30, Inc. v. The Consolidated City of Jacksonville,* No. 2000-4718-CA (Fla. 4th Cir. Ct. December 21, 2001). *And see Sarasota Herald-Tribune Co. v. Sarasota County Sheriff's Office,* No. 96-1026-CA-01 (Fla. 12th Cir. Ct. March 13, 1996) (denying newspaper's request for booking photograph of sheriff's deputy who had filed a written request for confidentiality). Thus, in AGO 07-21, the Attorney General's Office stated that in cases where s. 119.071(4)(d)8. [*see now* s. 119.071(4)(d)2.], F.S., applies and the officer has filed a written request to maintain the information as exempt, it may be advisable in light of the cases cited above to obtain the officer's permission before the release of the photograph.

While s. 119.071(4)(d)1., F.S., exempts the home addresses, telephone numbers, social security numbers and photographs from the mandatory disclosure requirements of the Public Records Act, it does not prohibit the city from maintaining the names and addresses of its law enforcement officers. AGO 90-50. *See also* Inf. Op. to Reese, April 25, 1989 (information from the city personnel files which reveals the home addresses of former law enforcement personnel may be disclosed to the State Attorney's office for the purpose of serving criminal witness subpoenas by mail pursuant to s. 48.031, F.S.). *And see* Inf. Op. to Laquidara, July 17, 2003, advising that the cellular telephone numbers of telephones provided by the agency to law enforcement officers and used in performing law enforcement duties are not exempt from disclosure under this exemption.

Section 119.071(4)(d)1.a., F.S., does not contain a definition of "law enforcement personnel." Thus, the scope of the exemption is not clear. The Attorney General's Office has noted this problem and has recommended that the Legislature clarify the statute. AGO 07-21 and Inf. Op. to Morgan, September 28, 1992. In the interim, it has been suggested that agencies, faced with implementing the provisions of s. 119.071(4)(d), F.S., consider utilizing the definition of "law enforcement officer" contained in s. 784.07, F.S. *Id.* This statute, which imposes increased penalties for assault and battery on law enforcement officers, has a purpose similar to that of s. 119.071(4)(d), in that it seeks to protect the safety of such individuals. "Law enforcement officer" is defined for purposes of s. 784.07(1)(d), F.S., to include:

[A] law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10, and any county probation officer; an employee or agent of the Department of Corrections who supervises or

provides services to inmates; an officer of the Parole Commission; . . . and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the Department of Law Enforcement.

c. Polygraph records

The Attorney General's Office is not aware of any statutory provision barring access to otherwise public records, simply because the records are in the form of polygraph charts. *See, e.g.*, *Wisner v. City of Tampa Police Department,* 601 So. 2d 296 (Fla. 2d DCA 1992) (polygraph materials resulting from polygraph examination that citizen took in connection with a closed internal affairs investigation were public records); and *Downs v. Austin*, 522 So. 2d 931 (Fla. 1st DCA 1988) (because state had already publicly disclosed the results of polygraph tests administered to defendant's accomplice, the tests were not exempt criminal investigative or intelligence information and were subject to disclosure to the defendant).

However, a circuit court has noted that the exemption from disclosure found in s. 119.071(1)(a), F.S., for employment examination questions and answers could exempt some information contained in pre-employment polygraph records. *See Gillum v. Times Publishing Company,* No. 91-2689-CA (Fla. 6th Cir. Ct. July 10, 1991) (newspaper entitled to access to employment polygraph records "to the extent such records consist of polygraph machine graph strips and examiners' test results, including the bottom portion of the machine graph denoted 'Findings and Comments' or similar designation;" however, agency could redact "any examinee's actual answers to questions or summaries thereof" pursuant to the exemption for employment examination questions and answer sheets that is now found at s**.** 119.071[1][a], F.S.).

d. Undercover personnel

Section 119.071(4)(c), F.S., provides that any information revealing undercover personnel of any criminal justice agency is exempt from public disclosure. *But see Ocala Star Banner Corporation v. McGhee*, 643 So. 2d 1196, 1197 (Fla. 5th DCA 1994)-(police department should not have refused to release an entire police report containing some information that could lead to an undercover person's identity, when, without much difficulty, the name or initials and identification numbers of the undercover officer and that officer's supervisor could be taken out of the report and the remainder released). *Accord Christy v. Palm Beach County Sheriff's Office,* 698 So. 2d 1365 (Fla. 4th DCA 1997).

12. Motor vehicle records

a. Crash reports

Motor vehicle crash reports are confidential for a period of 60 days after the report is filed. Section 316.066(3)(a), F.S. However, such reports may be made immediately available to the parties involved in the crash, their legal representatives, their insurance companies and agents, prosecutorial authorities, law enforcement agencies, county traffic operations, victims services programs, and certain print and broadcast media as described in the exemption. Section 316.066(3)(b), F.S. The owner of a vehicle involved in a crash is among those authorized to receive a copy of the crash report immediately. AGO 01-59.

In addition, the statute provides that any local, state, or federal agency that is authorized to have access to crash reports by any provision of law shall be granted such access in the furtherance of the agency's statutory duties. Section 316.066(3)(c), F.S. *Cf.* AGOs 06-11 (fire department that is requesting crash reports in order to seek reimbursement from the at-fault driver, does not fall within the scope of this provision authorizing immediate access to the reports), and 09-22 (county not entitled to receive information contained in crash reports prepared pursuant to s. 316.066, F.S., based on its motor vehicle accident cost recovery fee ordinance).

"As a condition precedent to accessing a crash report within 60 days after the date the report is filed, a person must present a valid driver's license or other photographic identification, proof of status or identification that demonstrates his or her qualifications to access that information, and file a written sworn statement with the state or local agency in possession of the information stating that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party for the purpose of such solicitation, during the period of time that the information remains confidential and exempt." Section 316.066(3)(d), F.S. Reports may be released without the sworn statement to third-party vendors under contract with one or more insurers, but only if the conditions set forth in the statute are stated in the contract. *Id*. Third-degree felony penalties are established for knowing unauthorized disclosure or use of confidential information in violation of this statute. *See* s. 316.066(4)(b), (c), and (d), F.S., for more information.

b. Department of Highway Safety and Motor Vehicles records

Section 119.0712(2)(b), F.S., provides that personal information, including highly restricted personal information as defined in 18 U.S.C. s. 2725, contained in a motor vehicle record is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 *et seq*. Such information may be released only as authorized by that act; however, information received pursuant to that act may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers. *Id*. *Cf. Rine v. Imagitas, Inc.*, 590 F.3d 1215 (11th Cir. 2009) (marketing company that pursuant to contract with the state mailed vehicle registration notices in envelopes containing advertisements and solicitations from company's client-advertisers to non-consenting Florida drivers did not violate Driver's Privacy Protection Act of 1994).

Emergency contact information contained in a motor vehicle record is confidential and exempt, and, without the express consent of the person to whom such emergency contact information applies, may only be released to law enforcement agencies for purposes of contacting those listed in the event of an emergency. Section 119.0712(2)(c)1. and 2., F.S.

The term "motor vehicle record" is defined to mean any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles (DHSMV). Section 119.0712(2)(a), F.S. The Attorney General's Office has stated that while DHSMV motor vehicle records are confidential in the hands of a law enforcement agency, to the extent information is taken from DHSMV records and used in preparing other records of the law enforcement agency or its agent, the confidentiality requirements of s. 119.0712(2)(a), F.S., do not reach those records created by subsequent users. Thus, a driver's license number that is included in a law enforcement officer's report is not confidential or exempt from disclosure and copying. AGO 10-10. *And see* Inf. Op. to Rubin, May 12, 2010, advising that the statute does not act as a bar against the town producing copies of notices of infraction for speed zone violations issued pursuant to the town's street safety program.

The DHSMV, prior to disclosure of personal information pursuant to s. 119.0712(2), F.S., or the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 *et seq.*, may require the requestor to meet certain conditions for the purposes of obtaining reasonable assurance concerning the identity of the requestor and, to the extent required, assurance that the use will be only as authorized or that the consent of the person who is the subject of the personal information has been obtained. Section 119.0712(2)(d), F.S. Such conditions may include, but are not limited to, the making and filing of a written application in such form and containing such information and certification requirements as the department requires. *Id*. *And see* s. 316.066(3)(a), F.S., providing limitations on access to crash reports for a period of 60 days after the report is filed; and s. 322.142(4), F.S., restricting access to reproductions of color photographic or digital imaged driver's licenses.

13. Pawnbroker records

All records relating to pawnbroker transactions delivered to appropriate law enforcement officials pursuant s. 539.001, F.S., the Florida Pawnbroking Act, are confidential and exempt from disclosure and may be used only for official law enforcement purposes. Section 539.003, F.S. However, law enforcement officials are not prohibited from disclosing the name and address of the pawnbroker, the name and address of the conveying customer, or a description of the pawned property to the alleged owner of pawned property. *Id. And see* AGO 01-51.

14. Prison and inmate records

In the absence of statutory exemption, prison and inmate records are subject to disclosure under the Public Records Act. *Cf. Williams v. State*, 741 So. 2d 1248 (Fla. 2d DCA 1999) (order imposing offender's habitual offender sentence and documents showing his qualifying convictions, subject to disclosure under Ch. 119). A discussion of some of the exemptions from disclosure follows; for a complete listing of exemption summaries, please refer to Appendix D.

Subject to limited exceptions, s. 945.10, F.S., states that the following records and information held by the Department of Corrections are confidential and exempt from public inspection: mental health, medical or substance abuse records of inmates; pre-plea, pretrial intervention, presentence or post-sentence investigative records; information regarding a person in the federal witness protection program; confidential or exempt Parole Commission records; information which if released would jeopardize someone's safety; information concerning a victim's statement and identity; information which identifies an executioner; and records that are otherwise confidential or exempt by law. *See Bryan v. State*, 753 So. 2d 1244 (Fla. 2000), in which the Florida Supreme Court upheld the constitutionality of s. 945.10. *See also Roberts v. Singletary,* No. 96-603 (Fla. 2d Cir. Ct. July 28, 1997) (portions of the Department of Corrections Execution Procedures Manual containing "highly sensitive security information" not subject to disclosure). *Cf.* s. 951.27, F.S. (limited disclosure of infectious disease test results, including HIV testing pursuant to s. 775.0877, F.S., of inmates in county and municipal detention facilities).

The Public Records Act applies to a private corporation which has contracted to operate and maintain the county jail. *Times Publishing Company v. Corrections Corporation of America,* No. 91-429 CA 01 (Fla. 5th Cir. Ct. December 4, 1991), *per curiam affirmed,* 611 So. 2d 532 (Fla. 5th DCA 1993). *See also Prison Health Services, Inc. v. Lakeland Ledger Publishing Company,* 718 So. 2d 204 (Fla. 2d DCA 1998), *review denied*, 727 So. 2d 909 (Fla. 1999) (records of private company under contract with sheriff to

provide health care to jail inmates are subject to Ch. 119 just as if they were maintained by a public agency).

15. Resource inventories and emergency response plans

Section 119.071(2)(d), F.S., exempts "[a]ny comprehensive inventory of state and local law enforcement resources compiled pursuant to part I, chapter 23, and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies, as defined in s. 252.34(3) . . . ." *See Timoney v. City of Miami Civilian Investigative Panel*, 917 So. 2d 885 (Fla. 3d DCA 2005), in which the court held that a city police department's Operational Plan prepared in response to intelligence reports warning of possible violence surrounding an economic summit remained exempt from disclosure after the summit ended. The court found that the city planned to use portions of the Plan for future events and the "language of [the exemption] leads us to believe that the legislature intended to keep such security information exempt after an immediate emergency passes." *Id*. at 887. *And see* s. 119.071(3)(a)1., F.S., which includes "emergency evacuation plans" and "sheltering arrangements" within the definition of a "security system plan" that is confidential and exempt from public disclosure.

16. Security system information and blueprints

a. Security system information

Information relating to the security systems for property owned by or leased to the state or any of its political subdivisions is confidential and exempt from disclosure. Section 281.301, F.S. Exempt information includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such security systems or information. *Id*. The exemption extends to information relating to or revealing the security systems for property owned or leased by the state or its political subdivisions, and also to security information concerning privately owned or leased property which is in the possession of an agency. AGOs 01-75 and 93-86. *See also* s. 331.22, F.S. (airport security plans) and s. 311.13, F.S. (seaport security plans).

Section 119.071(3)(a), F.S., provides a similar exemption from disclosure for a security system plan of a private or public entity that is held by an agency. However, the information may be disclosed to the property owner or leaseholder as well as to another state or federal agency to prevent, detect, or respond to an attempted or actual act of terrorism or for prosecution of such attempts or acts. *Id*.

The term "security system plan" includes: records relating directly to the physical security of the facility or revealing security systems; threat assessments conducted by an agency or private entity; threat response plans; emergency evacuation plans; sheltering arrangements; or security manuals. *Id. Cf.* s. 381.95, F.S., providing an exemption for information identifying the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories established, maintained, or regulated by the Department of Health as part of the state's plan of defense against terrorism; and s. 395.1056, F.S., providing an exemption for those portions of a comprehensive emergency management plan that address the response of a public or private hospital to an act of terrorism.

Sections 281.301 and 119.071(3)(a), F.S., prohibit public disclosure of the name and address of applicants for security system permits, of persons cited for violations of alarm ordinances, and of individuals who are the subject of law enforcement dispatch reports for verified or false alarms "because disclosure would imperil the safety of persons and property." *Critical Intervention Services, Inc. v. City of Clearwater,* 908 So. 2d 1195, 1197 (Fla. 2d DCA 2005). *Accord* AGO 04-28.

b. Blueprints

Section 119.071(3)(b)1., F.S., exempts building plans, blueprints, schematic drawings, and diagrams of government buildings. Exempt information may be disclosed to another governmental entity, to a licensed professional performing work on the building, or upon a showing of good cause to a court. Section 119.071(3)(b)3., F.S. Exempt documents may also be released in order to comply with competitive bidding requirements. AGO 02-74. However, the entities or persons receiving such information must maintain its exempt status. *Id*. *And see* s. 119.071(3)(c)1., F.S. (exemption for building plans, blueprints, schematic drawings and diagrams of various attractions, retail, resort, office, and industrial complexes and developments when the records are held by an agency). The exemption afforded by this statute, however, does not apply to comprehensive plans or site plans, or amendments thereto, which are submitted for approval or which have been approved under local land development regulations, local zoning regulations, or development of regional impact review. Section 119.071(3)(c)4., F.S.

17. Surveillance techniques, procedures or personnel

Information revealing surveillance techniques, procedures or personnel is exempt from public inspection pursuant to s. 119.071(2)(d), F.S. *See Rameses, Inc. v. Demings*, 29 So. 3d 418 (Fla. 5th DCA 2010) (disclosure to criminal defendant of unredacted undercover police surveillance recordings does not destroy exemption in s. 119.071[2][d], F.S.; therefore, sheriff is only required to provide redacted recording in response to a public records request); and *State v. Bee Line Entertainment Partners Ltd.,* No. CIO 00-5358, 28 Med.L.Rptr. 2592 (Fla. 9th Cir. Ct. October 25, 2000) (videotapes created with hidden camera by law enforcement investigation showing result of investigative activity but that do not reveal confidential surveillance methods must be released once investigation is no longer active).

18. Victim information

Although s. 119.071(2)(c), F.S., exempts active criminal investigative information from disclosure, the "name, sex, age, and address of . . . the victim of a crime, except as provided in s. 119.071(2)(h)," are specifically excluded from the definition of criminal investigative or intelligence information. *See* s. 119.011(3)(c)2., F.S. Accordingly, victim information is considered to be public record in the absence of statutory exemption. A discussion of the exemptions which apply to crime victims generally, and those which apply to the victims of certain crimes, follows. For a discussion of the exemptions that apply to records of juvenile offenders, please refer to s. G.10, *supra.*

a. Amount of stolen property

Pursuant to s. 119.071(2)(i), F.S., criminal intelligence or investigative information that reveals the personal assets of a crime victim, which were not involved in the crime, is exempt from disclosure. However, the Attorney General's Office has stated that this exemption does not apply to information relating to the amount of property stolen during the commission of a crime. AGO 82-

30. Note, however, that s. 119.071(2)(j)1., F.S., provides that victims of certain crimes may file a written request to exempt information revealing their "personal assets."

b. Commercial solicitation of victims

Section 119.105, F.S., provides that police reports are public records except as otherwise made exempt or confidential and that every person is allowed to examine nonexempt or non-confidential police reports. However, a person who comes into possession of exempt or confidential information in police reports may not use that information for commercial solicitation of the victims or relatives of the victims and may not knowingly disclose such information to a third party for the purpose of such solicitation during the period of time that information remains exempt or confidential. *Id*. The statute "does not prohibit the publication of such information to the general public by any news media legally entitled to possess that information or the use of such information for any other data collection or analysis purposes by those entitled to possess that information." *Id.* A willful and knowing violation of this statute is a third-degree felony. Section 119.10(2)(b), F.S. *And see* s. 316.650(11), F.S. (driver information contained in a uniform traffic citation shall not be used for commercial solicitation purposes); s. 327.301, F.S. (accident reports made by persons involved in vessel accidents may not be used for commercial solicitation purposes). *Cf. Los Angeles Police Department v. United Reporting Publishing Corporation*, 120 S.Ct. 483 (1999) (California statute that imposes conditions on public access to addresses of arrestees is not facially unconstitutional; the law does not abridge anyone's right to engage in speech but simply regulates access to information in the hands of the police department).

By contrast, s. 316.066(3)(a), F.S., restricts access to crash reports required by that section for a period of 60 days after the report is filed. However, such reports may be made immediately available to the parties involved in the crash and other entities as set forth in the exemption. *Id*. For more information about access to crash reports, please refer to the discussion on that topic in s. G.12(a), *supra*, in this manual.

c. Documents regarding victims which are *received* by an agency

Section 119.071(2)(j)1., F.S., exempts from disclosure any document that reveals the identity, home or employment telephone number or address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, if that document is *received* by an agency that regularly receives information from or concerning the victims of crime. However, this provision is limited to documents *received* by agencies which regularly receive information from or concerning victims of crime; it does not apply to records generated or made by these agencies. AGO 90-80. Accordingly, this exemption does not apply to police reports. *Id.* Additionally, the exemption does not apply to documents revealing the identity of a victim of crime which are contained in a court file not closed by court order. AGO 90-87.

Section 119.071(2)(j)1., F.S., also provides that "[a]ny state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this section." *See* Inf. Op. to McCabe, November 27, 1995 (state attorney authorized to release materials received during an investigation of a domestic violence incident to a police department for use in the department's internal affairs investigation).

d. Home or employment address, telephone number, assets

Victims of specified crimes listed in s. 119.071(2)(j)1., F.S., are authorized to file a written request for confidentiality of their addresses, telephone numbers and personal assets as follows:

Any information not otherwise held confidential or exempt [from disclosure] which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of *sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence* is exempt [from disclosure] *upon written request by the victim* which must include official verification that an applicable crime has occurred.

Such information shall cease to be exempt 5 years after the receipt of the written request. (e.s.)

This exemption is not limited to documents *received* by an agency, but exempts specified information in records--whether generated or received by--an agency. Thus, a victim of the enumerated crimes may file a written request and have his or her home or employment telephone number, home or employment address, or personal assets, exempted from the police report of the crime, provided that the request includes official verification that an applicable crime has occurred as provided in the statute. *Criminal Law Alert*, Office of the Attorney General, June 29, 1995. The exemption is limited to the victim's address, telephone number, or personal assets; it does not apply to the victim's identity. *City of Gainesville v. Gainesville Sun Publishing Company*, No. 96-3425-CA (Fla. 8th Cir. Ct. October 28, 1996).

The incident report or offense report for one of the listed crimes may constitute "official verification that an applicable crime has occurred." *Criminal Law Alert*, Office of the Attorney General, June 29, 1995. In addition, the requirement that the victim make a written request for confidentiality applies only to information not otherwise held confidential by law; thus, the exemption supplements, but does not replace, other confidentiality provisions applicable to crime victims. *Id.* The exemption applies to records created prior to, as well as after, the agency's receipt of the victim's written request for confidentiality. AGO 96-82.

There is no exception to the provisions of s. 119.071(2)(j)1., F.S., for copies of the police report that are sent to domestic violence centers; thus, the victim's address and telephone number must be deleted from the copy of the police report that is sent to a domestic violence center pursuant to s. 741.29, F.S., if the victim has made a written request for confidentiality pursuant to s. 119.071(2)(j)1., F.S. AGO 02-50.

e. Information revealing the identity of victims of sex offenses and of child abuse

(1) Law enforcement and prosecution records

Section 119.071(2)(h)1., F.S., provides a comprehensive exemption from disclosure for information which would reveal the identity of victims of sexual offenses prohibited in Chs. 794, 796, 800, 827 or 847, F.S., or of child abuse as proscribed in Ch. 827, F.S. The exemption includes the "photograph, name, address, or other fact or information" which would reveal the identity of the victim of these crimes. The exemption applies to "any criminal intelligence information or criminal investigative information or other criminal record, including those portions of court records and court proceedings," which may reveal the victim's identity. *Id.*

In addition, the photograph, videotape, or image of any part of the body of a victim of a sexual offense prohibited under Chs. 794, 796, 800, 827 or 847, F.S., is confidential and exempt, regardless of whether the photograph, videotape, or image identifies the victim. Section 119.071(2)(h)1.c., F.S.

Section 119.071(2)(j)2., F.S., provides that identifying information in a videotaped statement of a minor who is alleged to be or who is a victim of a sexual offense prohibited in the cited laws which reveals the minor's identity, including, but not limited to, the minor's face; the minor's home, school, church, or employment telephone number; the minor's home, school, church, or employment address; the name of the minor's school, church, or place of employment; or the personal assets of the minor; and which identifies the minor as a victim, held by a law enforcement agency, is confidential. Access shall be provided, however, to authorized governmental agencies when necessary to the furtherance of the agency's duties. *Id*.

Thus, information revealing the identity of victims of child abuse or sexual battery must be deleted from the copy of the report of domestic violence which is sent by a law enforcement agency to the nearest domestic violence center pursuant to s. 741.29(2), F.S. AGO 92-14. *And see Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278 (Fla. 4th DCA 2001), applying exemption to information identifying a child abuse victim which was contained in files prepared as part of an internal investigation conducted in accordance with s. 112.533, F.S.

However, the identity of a child abuse victim who *died* from suspected abuse is not confidential. AGO 90-103.

A public employee or officer having access to the photograph, name, or address of a person alleged to be a victim of an offense described in Ch. 794 (sexual battery); Ch. 800 (lewdness, indecent exposure); s. 827.03 (child abuse); s. 827.04 (contributing to delinquency or dependency of a child); or s. 827.071 (sexual performance by a child) may not willfully and knowingly disclose it to a person not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, a person specified in a court order entered by the court having jurisdiction over the alleged offense, to organizations authorized to receive such information made exempt by s. 119.071(2)(h), F.S., or to a rape crisis center or sexual assault counselor, as defined in s. 90.5035(1)(b), F.S., who will be offering services to the victim. Section 794.024(1), F.S. A violation of this section constitutes a second degree misdemeanor. Section 794.024(2), F.S. *Cf. State v. Globe Communications Corporation*, 648 So. 2d 110, 111 (Fla. 1994) (statute mandating criminal sanctions for printing, publishing or broadcasting "in any instrument of mass communication" information identifying a victim of a sexual offense, ruled unconstitutional).

An entity or individual who communicates to others, prior to open judicial proceedings, the name, address, or other specific identifying information concerning the victim of any sexual offense under Ch. 794 or Ch. 800 shall be liable to the victim for all damages reasonably necessary to compensate the victim for any injuries suffered as a result of such communication. Section 794.026(1), F.S. The victim, however, may not maintain a cause of action unless he or she is able to show that such communication was intentional and was done with reckless disregard for the highly offensive nature of the publication. Section 794.026(2), F.S. *Cf. Cox Broadcasting Corp. v. Cohn*, 95 S.Ct. 1029 (1975); and *Cape Publications, Inc. v. Hitchner*, 549 So. 2d 1374 (Fla. 1989), *appeal dismissed*, 110 S.Ct. 296 (1989).

The Crime Victims' Services Office in the Attorney General's Office is authorized to receive confidential records from law enforcement and prosecutorial agencies. Section 960.05(2)(k), F.S.

And see AGO 92-51 (city victim services division, as a governmental agency which is part of the city's criminal justice system, may receive identifying information about victims of sex offenses, for the purpose of advising the victim of available services pursuant to s. 960.001, F.S., requiring distribution of victim support information).

(2) Court records

The Legislature intended to make the identity of a victim of a sexual offense confidential in court records. AGO 03-56. *See* s. 119.0714(1)(h), F.S.

Section 92.56, F.S., provides that criminal intelligence information or criminal investigative information made confidential pursuant to s. 119.071(2)(h) must be maintained in court records and in court proceedings, including witnesses' testimony. If a petition for access to these records is filed with the trial court with jurisdiction over alleged offense, the status of the information must be maintained by the court if the state or the victim demonstrate certain factors as set forth in the statute. Section 92.56(1), F.S. A person who willfully and knowingly violates section 92.56, F.S., or any court order issued under this section is subject to contempt proceedings. Section 92.56(6), F.S.

(3) Department of Children and Family Services abuse records

As discussed in s. K. of this manual, there are statutory exemptions set forth in Ch. 415, F.S., which relate to records of abuse of vulnerable adults. Similar provisions relating to child abuse records are found in Ch. 39, F.S. The Attorney General's Office has concluded that the confidentiality provisions in these laws, *i.e.*, ss. 415.107 and 39.202, F.S., apply to records of the Department of Children and Family Services and do not encompass a law enforcement agency's *arrest* report of persons charged with criminal child abuse, after the agency has deleted all information which would reveal the identity of the victim. *See* AGO 93-54**.** *Accord* Inf. Op. to O'Brien, January 18, 1994. *Cf. Times Publishing Company v. A.J.*, 626 So. 2d 1314 (Fla. 1993), holding that a sheriff's incident report of alleged child abuse that was forwarded to the state child welfare department for investigation pursuant to Ch. 415, F.S. 1990 [*see now* Part II, Ch. 39, F.S., entitled "Reporting Child Abuse"], should not be released. The Court noted that the department had found no probable cause and that child protection statutes accommodate privacy rights of those involved in these cases "by providing that the supposed victims, their families, and the accused should not be subjected to public scrutiny at least during the initial stages of an investigation, before probable cause has been found." *Id.* at 1315.

Section 39.202(1), and (2)(b), F.S., authorizes criminal justice agencies to have access to confidential abuse, abandonment, or neglect records held by the Department of Children and Family Services and provides that the exemption from disclosure for department abuse records also applies to department records and information in the possession of the agencies granted access. *See* Inf. Op. to Russell, October 24, 2001.

f. Relocated victim or witness information

Information held by a law enforcement agency, prosecutorial agency, or the Victim and Witness Protection Review Committee which discloses the identity or location of a victim or witness who has been identified or certified for protective or relocation services is confidential and exempt from disclosure. The identity and location of immediate family members of such victims or

witnesses are also protected, as are relocation sites, techniques or procedures utilized or developed as a result of the victim and witness protective services. Section 914.27, F.S.